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FILED & ENTERED

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CLERK U.S. BANKRUPTCY COURT  
Central District of California  
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NOT FOR PUBLICATION

CHANGES MADE BY COURT  
UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re: ) Case No. 2:17-bk-17577-RK  
)  
)  
) Chapter 11  
)  
**PETER G. KUDRAVE** )  
) **ORDER DENYING MOTON**  
) **AUTHORIZING USE OF ESTATE**  
) **FUNDS OTHER THAN IN THE**  
Debtor. ) **ORDINARY COURSE OF BUSINESS**  
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Pending before the court is the motion of Debtor Peter G. Kudrave Authorizing Use of Estate Funds Other Than in the Ordinary Course of Business, filed on July 11, 2017 (Docket No. 18). David A. Tilem, of the Law Offices of David A. Tilem, represents Debtor. Debtor filed a declaration that no party

1 requested a hearing on the Motion pursuant to Local Bankruptcy  
2 Rule 9013-1(o)(3), filed on July 28, 2017 (Docket No. 28).

3 The court having considered the moving papers and arguments  
4 from counsel contained therein,

5 **IT IS HEREBY ORDERED:**

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7 1. The motion authorizing use of estate funds other than  
8 in the ordinary course of business is hereby denied without  
9 prejudice.

10 2. The motion is denied because "Debtor requests, under  
11 Section 363(b) [of the Bankruptcy Code, 11 U.S.C.], that he be  
12 permitted to retain full and unfettered use of his postpetition  
13 income." Motion at 6 and 7. Alternatively, Debtor requests that  
14 he be allowed to use estate funds other than the ordinary course  
15 of business on a monthly budget as set forth on Exhibit A to the  
16 Motion, which were copies of his Schedule I:Your Income and  
17 Schedule J:Your Expenses, subject to a 15% variance. *Id.* at 7.  
18 Debtor argues that there are no standards governing an individual  
19 Chapter 11 debtor's use of estate funds, including his  
20 postpetition income now included in the estate pursuant to 11  
21 U.S.C. § 1115 added by the Bankruptcy Abuse Prevention and  
22 Consumer Protection Act (BAPCPA), to pay living expenses during  
23 the case if such expenses are not in the ordinary course of  
24 business within the meaning of 11 U.S.C. § 363(b)(1). *Id.* at 5.  
25 Based on the court's reading of the Motion, Debtor seems to  
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1 assume that use of estate funds to pay personal living expenses  
2 is always outside the ordinary course of business.

3 This may not be the case. Recently, a district court in  
4 Maryland observed that "some bankruptcy courts have found that  
5 individuals operating as Chapter 11 debtors-in-possession may use  
6 estate property on personal expenses without notice and a hearing  
7 so long as such expenses are in the 'ordinary course' rather than  
8 unusual or extraordinary." *In re Massenburg*, 554 B.R. 769, 775  
9 (D. Md. 2016), *citing*, *In re Seely*, 492 B.R. 284, 290 (Bankr.  
10 C.D. Cal. 2013) (Bluebond, J.) and *In re Bradley*, 185 B.R. 7, 8-9  
11 (Bankr. W.D.N.Y. 1995). Judge Bluebond in her opinion in *Seely*  
12 stated that an individual Chapter 11 debtor may use estate funds  
13 without court approval to pay for living expenses so long as such  
14 expenses were in the "ordinary course." 492 B.R. at 290.  
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16 However, ordinary course means ordinary course. See *In re Dant &*  
17 *Russell, Inc.*, 853 F.2 700, 704-705 (9<sup>th</sup> Cir. 1988) (setting for a  
18 two-part legal standard for ordinary course of business); *accord*,  
19 *In re Straightline Investments, Inc.*, 525 F.3d 870, 879 (9<sup>th</sup> Cir.  
20 2008). Contrary to Debtor's assertions, there are standards  
21 under 11 U.S.C. § 363(b)(1), and these are the standards, based  
22 on controlling circuit precedent, which does not make any  
23 exception for individual Chapter 11 debtors. Debtor cites no  
24 authority to support his argument that there are no standards,  
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1 and implicitly, that existing circuit precedent does not control  
2 here.

3 Moreover, if the use of estate funds to pay Debtor's living  
4 expenses is not in the "ordinary course," such use is subject to  
5 the general requirements of 11 U.S.C. § 363(b)(1) and applicable  
6 case law. *Id.* That is, if the proposed use of estate funds for  
7 personal living expenses is not within the ordinary course of  
8 business, a debtor-in-possession (or trustee) may use, sell or  
9 lease estate property only after notice and a hearing and upon a  
10 showing of the exercise of reasonable business judgment for such  
11 use outside the ordinary course of business. See, *In re Mark*  
12 *Vincent Kaplan*, No.2:15-bk-16187 RK Chapter 11 (Bankr. C.D. Cal.,  
13 order filed and entered on June 11, 2015) (Kwan, J.) (copy attached  
14 hereto), citing, 3 March, Ahart and Shapiro, *California Practice*  
15 *Guide: Bankruptcy*, ¶¶ 14:75 and 14:595 at 14(I)-6 and 14(I) at 49  
16 (2014), citing *inter alia*, *In re Lionel Corp.*, 722 F.2d 1063, 107  
17 (2<sup>nd</sup> Cir. 1983) and *In re Ernest Home Ctr., Inc.*, 209 B.R. 974,  
18 979 (Bankr. W.D. Wash. 1997).

19 This court in *In re Kaplan* noted that in *In re Villalobos*,  
20 2011 WL 4485793 (9<sup>th</sup> Cir. BAP 2011) (unpublished memorandum  
21 opinion), the Bankruptcy Appellate Panel of the Ninth Circuit  
22 reversed the order of the bankruptcy court approving the  
23 individual Chapter 11 debtor's personal living expenses on  
24 grounds that the bankruptcy court failed to issue sufficient  
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1 findings of fact and conclusions of law to support approval or  
2 disapproval of the expenses in the debtor's proposed budget as  
3 well as to support the approval of the debtor's budget *nunc pro*  
4 *tunc* to the petition date. *In re Mark Vincent Kaplan*, slip op.  
5 at \*4, citing, *In re Villalobos*, 2011 WL 4485793, slip op. at  
6 \*\*8-9 and n. 13. The Bankruptcy Appellate Panel of the Ninth  
7 Circuit in *In re Villalobos* stated: "[g]iven the uncertainty in  
8 this area of the law [i.e., post-BAPCPA], the identification of  
9 the proper Bankruptcy Code section for approval of personal  
10 expenses of individual Chapter 11 debtors, it is all the more  
11 important for the bankruptcy court to articulate the legal rule  
12 being applied and the explicit findings of fact that support the  
13 legal rule." *Id.*, slip op. at \*9.

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16 As to Debtor's first request for authorization of full and  
17 unfettered use of his postpetition income, the court determines  
18 that such blanket use of estate funds for whatever purpose of  
19 Debtor's choosing does not meet the standards of 11 U.S.C. §  
20 363(b)(1) and should be denied because such use may well include  
21 out of ordinary course of business expenditures without  
22 satisfying the requirements of that statute requiring court  
23 review and approval and evidence demonstrating the exercise of  
24 reasonable business judgment as discussed above. Debtor's  
25 argument that court review of use of estate funds for his  
26 personal living expenses (again without citation of any legal  
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1 authority) constitutes a "complete intrusion into the lives of  
2 individuals cannot and should not be tolerated" is best reserved  
3 for argument before the circuit, or better yet, Congress, since  
4 this court is bound to apply applicable circuit case precedent.

5  
6 As to Debtor's second request for authorization of his  
7 income and expense schedules as his budget with a 15% variance  
8 for expenses not within the ordinary course of business, Debtor  
9 has provided no evidence that such use of estate funds for the  
10 expenses listed on Schedule J meet the standards of 11 U.S.C. §  
11 363(b)(1) requiring a demonstration of the exercise of reasonable  
12 business judgment. In a conclusory manner, Debtor declares: "I  
13 am trying to be respectful of my obligations as a fiduciary for  
14 creditors, however I need to provide for my ongoing living  
15 expenses." Motion at 9. There is no explanation supported by  
16 evidence from Debtor to justify the specific monthly expenses  
17 listed on Schedule J, which seem unreasonable on their face for a  
18 debtor with no dependents, listing his occupation as a self-  
19 employed "expert witness", such as \$6,878.00 for rental or  
20 homeowner expenses for residence [i.e., this works out to  
21 \$82,536.00 a year, and there is no showing that such payment is  
22 an exercise of reasonable business judgment in terms of value to  
23 the estate); \$475.00 for electricity, heat and natural gas,  
24 \$795.00 for water, sewer, garbage collection, \$570.00 for  
25 telephone, cell phone, internet, satellite and cable services,  
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1 \$900.00 for transportation, \$600.00 for entertainment, \$250.00  
2 for monthly taxes owed for 2017 [i.e., unclear prepetition or  
3 postpetition], \$250.00 for computer maintenance and supply,  
4 \$1,200.00 for emergency expenses, \$208.33 for "Nevada State Fine  
5 (\$250 for 10 months)[i.e., this appears to be prepetition debt],  
6 \$1,666.00 for roofing repairs and replacement [i.e., this also  
7 appears to be prepetition debt, and if future expense, it is not  
8 shown to be reasonable and necessary), \$1,000.00 for "Long Term  
9 Care Policy Reinstatement" [i.e., appears to be prepetition debt,  
10 and if future expense, it is not shown to be reasonable and  
11 necessary] and \$700.00 for "Long Term Care Supplies" [not  
12 explained or justified].  
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15 Because Debtor's budget based on his income and expense  
16 schedules is not supported by admissible and credible evidence  
17 and legal authority to support findings of fact and conclusions  
18 of law that the proposed use of estate funds, including debtor's  
19 postpetition income, for his personal living expenses meets the  
20 applicable legal standard under 11 U.S.C. § 363(b) and case law,  
21 such as *In re Dant & Russell, Inc.*, and *In re Straightline*  
22 *Investments, Inc.*, relief based on such budget should be denied.  
23

24 For the foregoing reasons, the court denies the Motion  
25 without prejudice. Debtor is granted leave to file an amended  
26 motion which addresses the concerns raised in this order, if he  
27 wishes. If Debtor files an amended motion, the court expects  
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1 that he will submit admissible and credible evidence and briefing  
2 to support findings of fact and conclusions of law on the  
3 approval or disapproval of the use of estate funds to pay his  
4 personal living expenses under the Bankruptcy Code as outlined by  
5 the Bankruptcy Appellate Panel in *In re Villalobos* and by this  
6 court in this order. Debtor may not use the "negative notice"  
7 provisions of Local Bankruptcy Rule 9013-1 for such an amended  
8 motion.  
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10 IT IS SO ORDERED.

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24 Date: August 7, 2017

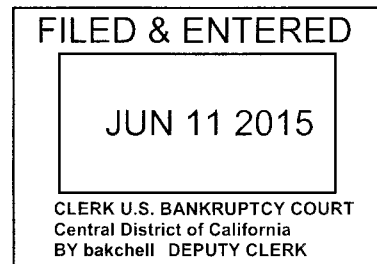


Robert Kwan  
United States Bankruptcy Judge



ATTACHMENT

Copy of order denying Debtor's motion for order pursuant to  
11 U.S.C. § 363 setting budget for interim use of estate  
property as defined in 11 U.S.C. § 1115 in *In re Mark  
Vincent Kaplan*, No. 2:15-bk-16187 RK Chapter 11 (Bankr. C.D.  
Cal., order filed and entered on June 11, 2015)



**ORDER NOT FOR PUBLICATION**  
**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**LOS ANGELES DIVISION**

In re:

MARK VINCENT KAPLAN,  
Debtor.

Case No. 2:15-bk-16187-RK

Chapter 11

**ORDER DENYING DEBTOR'S MOTION  
FOR ORDER PURSUANT TO 11 U.S.C. §  
363 SETTING BUDGET FOR INTERIM  
USE OF ESTATE PROPERTY AS  
DEFINED IN 11 U.S.C. § 1115**

On May 11, 2015, Debtor filed the instant "Motion in Individual Chapter 11 Case for Order Pursuant to 11 U.S.C. § 363 Setting Budget for Interim Use of Estate Property as Defined in 11 U.S.C. § 1115" (Docket No. 16) (the "Motion"). On May 29, 2015, Debtor filed a Declaration of Non-Opposition pursuant to Local Bankruptcy Rule 9013-1(o).

Having reviewed and considered the Motion, the court hereby denies the motion without prejudice and with leave to amend subject to the conditions set forth herein.

The motion is denied because it is not supported by admissible and credible evidence and legal authority to support findings of facts and conclusions of law that the proposed use of estate funds for the personal living expenses of Debtor in the amount of

1 \$45,318 per month is authorized under 11 U.S.C. § 363, which governs the use, sale and  
2 lease of property of a bankruptcy estate, or any other provision of the Bankruptcy Code,  
3 11 U.S.C. *In re Villalobos*, 2011 WL 4485793, slip op. at \*\*8-9 and n. 13 (9th Cir. BAP  
4 2011)(unpublished memorandum opinion). Although no opposition or objection to the  
5 Motion has been filed, and Local Bankruptcy Rule 9013-1(h) authorizes the court to deem  
6 such failure to be consent to granting the motion, the court is not obligated to do so. The  
7 court cannot grant a motion that has not made a prima facie case establishing that the  
8 moving party is entitled to the relief sought in the motion based on admissible evidence  
9 under the applicable law.

10 Debtor only provides his conclusory declaration as evidence in support of the  
11 Motion containing form language, "In order for the Debtor to reorganize effectively,  
12 Debtor must pay for reasonable actual household and/or business expenses." Motion at  
13 3. Unless the court orders otherwise, a trustee or a debtor-in-possession may use, sell or  
14 lease estate property in the "ordinary course of business" without court approval pursuant  
15 to 11 U.S.C. § 363(c)(1). *See also*, 3 March, Ahart and Shapiro, *California Practice*  
16 *Guide: Bankruptcy*, ¶ 14:25 at 14(l)-2 (2014); *In re Seely*, 492 B.R. 284, 289-291 and nn.  
17 4-6 (Bankr. C.D. Cal. 2013). The court notes that 11 U.S.C. § 1115, as added to the  
18 Bankruptcy Code in 2005 by the Bankruptcy Abuse Prevention and Consumer Protection  
19 Act of 2005 ("BAPCPA"), includes as property of the estate of a Chapter 11 debtor all  
20 earnings of the debtor after the commencement of the case before the case is closed,  
21 dismissed or converted, but that section does not refer to the use of such property while  
22 the case is pending. 11 U.S.C. § 1115(a)(2); *In re Villalobos*, 2011 WL 4485793, slip op.  
23 at \*\*8-9 and n. 13.

24 In filing the Motion, Debtor seeks court approval of his proposed use of estate  
25 funds from his postpetition earnings in accordance with his budget for personal living  
26 expenses attached to the Motion, apparently because he believes that his proposed  
27 budget for use of estate funds is outside the ordinary course of business. The proposed  
28 budget to use estate funds of \$45,318 per month for personal living expenses of Debtor,

1 a single person with no dependents, on first blush does seem to be outside the ordinary  
2 course of business, and Debtor makes no showing that his proposed use of estate funds  
3 meets the standard of ordinary course of business under 11 U.S.C. § 363. *In re Dant &*  
4 *Russell, Inc.*, 853 F.2d 700, 704-705 (9th Cir. 1988) (setting forth a two-part legal  
5 standard for ordinary course of business under 11 U.S.C. § 363); *accord, In re*  
6 *Straightline Investments, Inc.*, 525 F.3d 870, 879 (9th Cir. 2008).<sup>1</sup>

7 If the proposed use of estate funds for personal living expenses is not within the  
8 ordinary course of business, a trustee or debtor-in-possession may use, sell or lease  
9 estate property only after notice and a hearing and upon a showing of the exercise of  
10 reasonable business judgment for such use outside the ordinary course of business  
11 under 11 U.S.C. § 363(b)(1). *See also*, 3 March, Ahart and Shapiro, *California Practice*  
12 *Guide: Bankruptcy*, ¶¶ 14:75 and 14:595 at 14(l)-6 and 14(l)-49, *citing inter alia, In re*  
13 *Lionel Corp.*, 722 F.2d 1063, 1071 (2nd Cir. 1983) and *In re Ernest Home Ctr., Inc.*, 209  
14 B.R. 974, 979 (Bankr. W.D. Wash. 1997).

15 Because the evidence in support of the Motion is insufficient to show that Debtor's  
16 proposed use of estate funds is within the ordinary course of business or that Debtor has  
17 demonstrated reasonable business judgment for such use, the Motion will be denied.  
18 Other courts apparently have not articulated a specific and different standard for use of  
19 estate funds of an individual Chapter 11 debtor for personal living expenses under 11  
20 U.S.C. § 363 or another Bankruptcy Code provision other than the standards laid out in *In*  
21 *re Dant & Russell, Inc.*, 853 F.2d at 704-705, *In re Straightline Investments, Inc.*, 525

22 <sup>1</sup> Debtor's personal living expenses on his proposed budget in the Motion appear to be anything but  
23 ordinary for a single individual with no dependents: (1) \$24,657 per month (not per year) for housing; (2)  
24 \$2,500 per month for food; (3) \$1,000 per month for entertainment; (4) \$2,770 per month for his leased  
25 vehicle (a 2015 Porsche Carrera 911 4S Cabriolet 2D as shown on his Schedule D of his petition, Docket  
26 No. 13, leased on January 14, 2015 (indicated by the date claim was incurred on the schedule), just over  
27 three months before the petition date of April 20, 2015); and (5) \$10,500 per month for payment of  
28 domestic support obligations (no supporting documentation submitted in the Motion). Exhibit B to Motion;  
Schedule D to Petition; *see also, In re Wood*, 68 B.R. 613 (Bankr. D. Haw. 1986)(large expenditures for  
unreasonable personal living expenses when other legitimate debts are not being paid may signify gross  
management of individual debtors' business affairs for purposes of 11 U.S.C. § 1112(b) to warrant  
conversion or dismissal of Chapter 11 case).

1 F.3d at 879, or *In re Lionel Corp.*, 722 F.2d at 1071. See also, *In re Villalobos*, 2011 WL  
2 4485793, slip op. at \*\*8-9 and n. 13. In *Villalobos*, the Bankruptcy Appellate Panel of the  
3 Ninth Circuit reversed the order of the bankruptcy court approving the individual Chapter  
4 11 debtor's personal living expenses on grounds that the bankruptcy court failed to issue  
5 sufficient findings of fact and conclusions of law to support approval or disapproval of the  
6 expenses in the debtor's proposed budget as well as to support approval of the debtor's  
7 budget *nunc pro tunc* to the petition date. *Id.* In *Villalobos*, the Bankruptcy Appellate  
8 Panel stated, "[g]iven the uncertainty in this area of the law [i.e., post-BAPCPA], the  
9 identification of the proper Bankruptcy Code section for approval of personal expenses of  
10 individual Chapter 11 debtors, it is all the more important for the bankruptcy court to  
11 articulate the legal rule being applied and the explicit findings of fact that support the legal  
12 rule." *Id.* at \*9.

13 IT IS HEREBY ORDERED as follows:

- 14 1. The Motion is denied without prejudice.
- 15 2. Debtor is granted leave to file an amended motion which addresses the  
16 concerns raised in this order, if he wishes. If Debtor files an amended motion,  
17 the court expects that he will submit admissible and credible evidence and  
18 briefing to support findings of fact and conclusions of law on the approval or  
19 disapproval of the use of estate funds to pay his personal living expenses  
20 under the Bankruptcy Code as outlined by the Bankruptcy Appellate Panel in  
21 *Villalobos* and by this court in this order.

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1 3. Debtor may not use the "negative notice" provisions of Local Bankruptcy Rule  
2 9013-1 for such an amended motion.

3 IT IS SO ORDERED.

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24 Date: June 11, 2015



Robert Kwan  
United States Bankruptcy Judge